

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MEDPOINTE HEALTHCARE INC.,)
)
)
Plaintiff,) C.A. No. 06-164 (SLR)
)
v.)
)
APOTEX INC. and APOTEX CORP.,)
)
Defendants.)

**DEFENDANTS APOTEX INC.'S AND APOTEX CORP.'S REVISED
NOTICE PURSUANT TO 35 U.S.C. §282**

Defendants Apotex Inc. and Apotex Corp. (collectively “Apotex”), pursuant to 35 U.S.C. §282, hereby identify certain patents and publications to be relied upon as showing either anticipation, the state of the art relating to U.S. Patent No. 5,164,194 (the “‘194 patent”) or any other use permissible under §282.

Apotex has previously provided notice and produced copies, identified in parenthesis by the Apotex document production numbers, to Plaintiff MedPointe Healthcare Inc. (“MedPointe”) of the identity of certain patents and publication within the ambit of 35 U.S.C. §282, through the pleadings filed in this action to date, the production of documents responsive to MedPointe’s discovery requests and the service of an earlier §282 notice in connection with the original February 2008 trial date. Apotex incorporates in this Notice, by reference, all pleadings and prior communications that identify patents and publications in connection with Apotex’s assertion that the ‘194 patent is invalid for one or more of the reasons provided in 35 U.S.C. §101, et seq. If and to the extent any of the patents and publications identified below were not previously produced in discovery, this Notice supplements Apotex’s prior discovery responses under Fed. R. Civ. P. 26(e).

The following listing of identified patents and publications is provided pursuant to the statutory provisions of 35 U.S.C. §282. The fact of the listing of the following identified patents and publications do not reflect that all, most, or any number of these patents and publications will ultimately be used by Apotex in the presentation of evidence at trial. Therefore, no implication should be taken that reliance on *all* of the identified patents and publication is necessary to support any of Apotex's patent invalidity defenses.

Apotex reserves the right to amend or supplement this Notice in the event additional discovery is provided in this action or the date for the commencement of this trial is changed from the currently scheduled date of February 4, 2008.

United States Patents and Related File Histories

1. U.S. Patent No. 158,564 issued January 12, 1875 (Barnes)(A06668 – A06670)*¹
2. U.S. Patent No. 2,119,643 issued June 7, 1938 (Mendl)(A06666 – A06667)*
3. U.S. Patent No. 2,136,940 issued November 15, 1938 (Ehbrecht)(A06661 – A06662)*
4. U.S. Patent No. 2,457,024 issued December 21, 1948 (Arp)(A06663 – A06665)*
5. U.S. Patent No. 2,822,314 issued February 4, 1958 (Ferlauto et al.)(A06050-A06051).
6. U.S. Patent No. 2,995,308 issued August 8, 1961 (Ashkenaz)(A06658 – A06660)*
7. U.S. Patent No. 3,017,411 issued January 16, 1962 (Engelbrecht et al.)(A05816 – A05817).
8. U.S. Patent No. 3,144,485 issued August 11, 1964 (Benn et al.)(A06031 – A06034).
9. U.S. Patent No. 3,753,988 issued August 21, 1973 (Rodway)(A05818 – A05822).
10. U.S. Patent No. 3,813,384 issued May 28, 1974 (Vogelsang et al.)(A00133 – A00138)(A06652 – A06657).*
11. U.S. Patent No. 3,845,052 issued October 29, 1974 (Stachel et al.)(A05823 – A05827).
12. U.S. Patent No. 3,878,217 issued April 15, 1975 (Carr et al.)(A00147 – A00156).

¹ * denotes prior art cited during the prosecution of U.S. Patent No. 5,164,194.

13. U.S. Patent No. 4,254,129 issued March 3, 1981 (Carr et al.)(A00294 – A00304).
14. U.S. Patent No. 4,313,931 issued February 2, 1982 (Walther et al.)(A00329 – A00339).
15. U.S. Patent No. 4,430,343 issued February 7, 1984 (Iemura et al.)(A00401 – A00413).
16. U.S. Patent No. 4,501,893 issued February 26, 1985 (Findlay et al.)(A08372 – A08378)
17. U.S. Patent No. 4,602,099 issued July 22, 1986 (Parker)(A08351 – A08358).
18. U.S. Patent No. 4,628,055 issued December 9, 1986 (Sherlock)(A06052-A06059).
19. U.S. Patent No. 4,704,387 issued November 3, 1987 (Engel et al.)(A00564 – A00569)(A06646 – A06651).*
20. U.S. Patent No. 4,728,509 issued March 1, 1988 (Shimizu et al.)(A06024 - A06030).
21. U.S. Patent No. 4,738,984 issued April 19, 1988 (A06042 - A06049).
22. U.S. Patent No. 4,769,369 issued September 6, 1988 (Thomas et al.). *
23. U.S. Patent No. 4,795,754 issued January 3, 1989 (Sawaki et al.)(A06035 – A06041).
24. U.S. Patent No. 4,841,047 issued June 20, 1989 (Engel et al.)(A00735 – A00753).
25. File History for U.S. Patent No. 4,704,387 (Engel, et al.)(A07506 – A07674).
26. File History for U.S. Patent No. 3,813,384 (Vogelsang, et al.)(A07377 – A07499).
27. File History for U.S. Patent No. 4,841,047 (Engel, et al.)(A06954 – A07376).

Foreign Patents And Published Applications

1. German Patent 1 046 625 (with English translation) published December 18, 1957 (Engelbrecht et al.)(A07784 – A07786).
2. German Patent 21 64 058 (with English translation) published July 27, 1972 (Vogelsang et al.)((A07500 – A07505)(A07540 – A07575).*
3. German Offenlegungsschrift DE 36 34 942 A1 (with English translation) published May 14, 1987 (Engel et al.)(A07787 – A07806).
4. European Patent Application(Application No. 0 222 191 A1)(with English translation) published May 20, 1987 (Engel et al.)(A07807 – A07877).

5. European Patent 0 222 191 B1 (with English translation) published May 20, 1987 (Engel et al.)(A07878 – A07910).
6. German Patent Application 34 33 776.8 (priority document for ‘387 patent)(with English translation)(A07618 – A07636).
7. German Patent Application 35 39 873 (priority document for ‘047 patent)(with English translation)(A05397 – A05452)(A05457 – A05505).
8. German Patent Application 35 30 793 published March 27, 1986 (Engel et al.)(A06158 – A06184).*
9. British Patent Specification No. 1,377,231 published December 11, 1974 (A06769 – A06780).*
10. European Patent 0 174 464 B1 published March 19, 1986 (Engel et al.)(A05944 – A05956).
11. European Patent Application 0 174 464 A2 published March 19, 1986 (Engel et al.)(A05855 – A05881).
12. European Patent 0 174 464 A3 published March 19, 1986 (Engel et al.)(A05882 – A05883).
13. European Patent Application 0 164 593 A1 published December 18, 1985 (Lawson et al.)(A05884 – A05943).
14. European Patent 0 164 593 B1 published December 18, 1985 (Lawson et al.)(A05957 – A05980).
15. German Patent 21 14 884 published October 12, 1972 (Stachel et al.)(A05800 – A05815).
16. German Patent 1 178 975 published January 27, 1958 (Thiel et al.)(OPT-MEDA000121- OPT-MEDA000126).
17. German Patent 1 208 036 published November 19, 1963 (Schalk et al.)(OPT-MEDA000127-OPT-MEDA000128).

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3. H.C. Ansel, "*Chapter 11 – Ophthalmic Preparations*" and "*Chapter 12 – Ear, Nose, and Topical Preparations,*" Introduction to Pharmaceutical Dosage Forms, 2nd Ed., pp. 333-349, (Lea & Febiger – Philadelphia)(1976)(A00194 – A00212).
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5. R.C. Kersten, "*Ophthalmic Drugs,*" Primary Care: Clinics in Office Practice, Vol. 9, No. 4, pp. 743-756 (December 1982)(A00350 – A00365).
6. A.G. Togias, R.M. Naciero, J. Warner, D. Proud, A. Kagey-Sobotka, I. Nimmagadda, P.S. Norman and L.M. Lichenstein, "*Demonstration of Inhibition of Mediator Release From Human Mast Cells by Azatadine Base,*" JAMA, Vol. 255, No. 2, pp. 225-229, (Jan. 10, 1986)(A00455 – A00461).
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8. H.J. Zechal, N. Brock, D. Lenke and U. Achterrath-Tuckermann, "*Pharmacological and Toxicological Properties of Azelastine, a Novel Antiallergic Agent,*" Arzneim-Forsch., Drug Res. 31 (II), No. 8, pp. 1184-1193 (1981)(A05102 – A05111).
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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